

services according to these rules within 30 days of the effective date of these rules, or within 30 days of the date the facilities-based telecommunications provider receives operating authority.

723-40-6.2 Rural facilities-based telecommunications providers shall file tariffs with the Commission implementing the resale of requested services according to these rules within 30 days after such company has received a *bona fide* request by a reseller that has been granted operating authority within the facilities-based telecommunications provider's service territory and the Commission has determined that such request is not unduly economically burdensome and is technically feasible.

RULE 4 CCR 723-40-7. NEGOTIATION, MEDIATION, AND ARBITRATION.

723-40-7.1 Nothing in Rule 6 shall be construed to limit a telecommunications provider's ability to reach a negotiated, mediated, or arbitrated agreement with respect to the rates, terms, and conditions associated with the resale of telecommunications services. Such agreements shall not be inconsistent with the rates, terms, or conditions contained in a telecommunications provider's currently effective tariff, ~~and will be processed according to the applicable Commission Rules of Practice and Procedure.~~

723-40-7.2 All agreements for resale of telecommunications services shall be submitted to the Commission for approval.

RULE 4 CCR 723-40-8. REGULATION OF RESELLERS.

723-40-8.1 All providers of residential basic local exchange services shall price such services to comply with statutory provisions of 40-15-502(3).

723-40-8.2 Until U S WEST Communications, Inc., is authorized to provide interLATA services in Colorado, or until February 8, 1999, whichever is earlier, a telecommunications provider that serves greater than 5 percent of the nation's presubscribed access lines may not jointly market, in Colorado, telecommunications exchange service obtained from U S WEST Communications, Inc., pursuant to 47 U.S.C. 251 (c)(4) with interLATA services offered by that telecommunications provider.

723-40-8.3 A reseller that obtains a telecommunications service at wholesale that, at retail is available only to a category of subscribers, is prohibited from offering such service to a different category of subscribers.

723-40-8.4 If the reseller is reselling basic local exchange service to a particular end-user, the end-user's bill must separately identify the reseller's Commission-approved price for basic local exchange service.

RULE 4 CCR 723-40-9. DISPUTE RESOLUTION. The Commission shall resolve disputes arising out of any provision of resold telecommunications services pursuant to these rules.

RULE 4 CCR 723-40-10. VARIANCE AND WAIVER. The Commission may permit a variance or waiver from these rules, if not contrary to law, for good cause shown and if it finds that compliance is impossible, impracticable or unreasonable.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE PROPOSED)
RULES REGARDING IMPLEMENTATION)
OF § 40-15-101, *ET SEQ.* - RESALE))
OF REGULATED TELECOMMUNICATIONS)
SERVICES.)

DOCKET NO. 95R-557T

ORDER ADOPTING RULES

Mailed Date: April 1, 1996
Adopted Date: March 29, 1996

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I. BY THE COMMISSION:

A. Procedural Background

1. This matter comes before the Commission to consider adoption of Rules Regarding Implementation of §§ 40-15-101 *et seq.* -- Resale of Regulated Telecommunications Services, in accordance with the requirements of House Bill 95-1335 ("HB 1335"), codified at §§ 40-15-501 *et seq.*, C.R.S.

2. In enacting HB 1335, the General Assembly determined that competition in the market for basic local exchange service is in the public interest. See § 40-15-101, C.R.S. Consistent with that determination, HB 1335 directs the Commission to encourage competition in the basic local exchange market by adoption and implementation of appropriate regulatory mechanisms to replace the existing regulatory framework. Furthermore, HB 1335 specifically directs the Commission to adopt rules governing the "terms and conditions for resale of telecommunications services that enhance competition." § 40-15-503(2)(b)(IV), C.R.S. HB 1335 also directs that the rules address the methods of paying for such resale of services.

3. The Working Group established pursuant to §§ 40-15-503 and 504, C.R.S., has recommended proposed rules for consideration by the Commission to implement HB 1335, in the form of the Report of the HB 1335 Telecommunications Working Group to the Colorado

Public Utilities Commission, dated November 30, 1995 (the "Preliminary Report"), and the Supplemental Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated December 20, 1995 (the "Supplemental Report").

4. The proposed Rules Regarding the Resale of Local Exchange Telecommunications Services which were transmitted with the Supplemental Report are not wholly consensus rules; that is, the members of the Working Group were unable to agree on a single set of proposed rules. Therefore, the proposed rules contain options for our consideration where the Working Group was unable to reach consensus.

5. The proposed rules were attached to our Supplemental Notice of Proposed Rulemaking in this docket, Decision No. C95-1303, mailed December 22, 1995. The purpose of the proposed rules is to comply with the legislative mandates contained in HB 1335, including the specific directives set forth in § 40-15-503(2)(b)(IV), C.R.S.

6. In accordance with our Supplemental Notice of Proposed Rulemaking, hearing on these proposed rules was held on February 9, 1996. A number of parties submitted written and oral comments for our consideration: AT&T Communications of the Mountain States, Inc.; AT&T Wireless Services; Colorado Independent Telephone Association; Competitive Telecommunications Association; Enhanced

Telemanagement, Inc.; ICG Access Services; MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc.; Office of Consumer Counsel ("OCC"); Sprint Communications Company, L.P.; Sprint Telecommunications Venture; Staff of the Public Utilities Commission ("Staff"); TCI; Telecommunications Resellers Association; Teleport Communications Group, Inc.; Teleport Denver Ltd.; U S WEST Communications, Inc. ("USWC"); and the University of Colorado and the Colorado State University ("Universities").

7. Prior to the commencement of hearing on February 9, 1996, the United States Congress passed, and President Clinton signed into law on February 8, 1996, the Telecommunications Act of 1996, P.L. 104-104 (the "Act"). The Act contains provisions which impact our regulation of intrastate telecommunications services inasmuch as it prohibits states from adopting laws or regulations which are inconsistent with the policies set forth in the Act.

8. Therefore, we allowed supplemental comments and replies to those supplemental comments to be filed by the parties to address the effects of the Act. We have considered all of those supplemental comments¹ and replies, including those filed immediately prior to commencement of our deliberations, as part of the rulemaking record.

9. In addition to the written comments filed in this docket and the oral comments made at hearing, the Commission took

¹ The Commission granted, in part, USWC's Motion to Strike Portions of Comments Filed by Enhanced Telemanagement, Inc. The part of Enhanced Telemanagement, Inc.'s comments which were stricken by Decision No. C96-312 were not considered by the Commission in its deliberations.

administrative notice of, and has considered and relied upon, the Preliminary Report, the Supplemental Report, and the House Bill 1335 Public Outreach Meetings Report dated December 20, 1995.² These reports are filed in Docket No. 95M-560T, the docket established by the Commission as the repository docket regarding implementation of §§ 40-15-105 *et seq.*, C.R.S.

B. Discussion.

1. Consensus and "substantial deference." The rules proposed by the Working Group were not wholly "consensus" rules. Subsections 40-15-503(1) and (2)(a), C.R.S., require that we give "substantial deference" to the proposals submitted by the Working Group with respect to issues on which the Working Group reports that it has reached consensus on or before January 1, 1996.

a. The statute does not define "substantial deference." Thus, in the course of the HB 1335-related rulemakings, we must develop and apply our understanding of "substantial deference." To do so, we have examined the concept of "substantial deference" within the context of the public policies articulated by the General Assembly, as well as in the context of the Commission's constitutional and statutory authorities and responsibilities.

² This report summarizes the comments (both oral and written) received during 16 public outreach meetings which the Commission held throughout the state in September and October, 1995, to solicit input on competition to provide local telephone service and on a proposed "Telecommunications Consumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboat Springs, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Montrose, Cortez, Durango, Alamosa, Fort Collins, Denver, and Fort Morgan. Participants represented a diverse cross-section of the public.

b. In implementing our understanding of "substantial deference," we take the following into consideration:³ our obligation to protect the public interest, as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rule with all provisions of § 40-15-501 *et seq.*, C.R.S., and other applicable statutes; the consistency of the proposed consensus rule with existing Commission rules; the ability of the public and of regulated entities to understand the proposed consensus rule; the ability of the Commission to enforce the proposed consensus rule; the ability of the proposed consensus rule to accomplish or to assist in the transition to a fully competitive telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable rates to all people of Colorado; and the fairness of the proposed consensus rule to all telecommunications service providers, existing and prospective. We examine each proposed consensus rule in light of these considerations.

c. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, the rationale support-

³ This listing is not a definitive statement of the considerations relied upon by the Commission.

ing any decision by this Commission to reject a consensus rule must be clearly articulated.

2. The Telecommunications Act of 1996. The Act specifically addresses the resale of services by local exchange telecommunications carriers. Section 251(a)(1) of the Act places a duty on each telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(b)(1) further requires all local exchange carriers "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of [their] telecommunications services." In addition, incumbent local exchange carriers⁴ are required by § 251(c)(4) "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 251(d)(3) permits State commissions to enforce regulations, orders, or policies that establish access and interconnection obligations (including resale) of local exchange carriers that are consistent with the requirements of § 251 and that do not substantially prevent implementation of the requirements of the Act.

⁴ The term "incumbent local exchange carrier" is defined in the Act at § 251(h)(1). See discussion *infra*.

a. The principal purpose of this docket, and of the rules that will be adopted as a result of this docket, is to implement the purposes of HB 1335. However, in implementing HB 1335, we would be unwise to adopt rules that we believe to be in conflict with the Act. To do so would be to impose on the Commission, potential litigation at the Federal Communications Commission, and the virtually certain future requirement of additional proceedings to amend those rules that fail to conform with the Act's requirements. Thus, we have attempted to ensure that the rules that we adopt as a result of the proceedings in this docket are consistent with the requirements of § 251 of the Act and do not substantially prevent implementation of the requirements of the Act.

b. The parties recognized the effect of the Act on our rulemaking, both during the hearing and in their supplemental comments and supplemental reply comments.⁵

3. Rule 1. Applicability. Proposal of the Universities.
The Universities proposed a new option for Rule 1: Applicability. The Universities argued that the requirements of these rules should not apply to institutions of higher education⁶ which own or lease and operate telecommunications systems for the purpose of providing intercommunications within those systems and local exchange access services to administration, faculty, staff, government and/or

⁵ See Motion to File Post-Hearing Resale Reply Comments and Request for Expedited Response Time filed by USWC on February 5, 1996. The Commission ruled at hearing that supplemental comments and supplemental reply comments would be allowed, and that those comments should include the parties' opinions regarding the impact of the Act on this rulemaking proceeding.

⁶ Section 24-113-102(2), C.R.S. (1988), defines an "institution of higher education" as "a state-supported college, university, or community college."

university-affiliated non-profit corporation employees at their work locations, and to students resident in institution-affiliated housing.

a. The Universities rely on this Commission's April 11, 1984 Decision No. R84-428, in support of their position. In that decision, the Commission determined that the Colorado State University ("CSU") telephone system did not constitute public utility service.⁷

b. In the discussion section of Decision No. R84-428, the administrative law judge stated:

CSU will not serve non-university entities such as the three private businesses located on campus or the Federal government agencies. Mountain Bell will continue to serve these businesses and agencies. CSU, by providing private service as above described, is not a public utility since it is not offering service to the general public indiscriminately.

* * *

The next question presented in this case is whether CSU, by its proposed telephone system, is a reseller of telephone service.

* * *

The Commission has ... in Decisions No. C82-1928 and C82-1925 defined "resale" as an entity charging more or less than the certificated supplier of utility service. The proposed CSU service does not constitute resale under the above definitions since CSU will not increase or reduce the cost of service. Consequently, CSU will not be a reseller of intrastate telecommunications services.

Decision No. R84-428 at 5.

c. Clearly, with the advent of HB 1335, the local exchange telecommunications service market in Colorado has changed

⁷ Decision No. R84-428 is expressly limited in its applicability to the telephone system of CSU as described in that decision.

radically. Specifically, in this docket, there is a consensus proposal to change the definition of "resale" that the Commission adopted in 1982. The definition proposed at Rule 2.4 is significantly broader than the 1982 definition, and depends on the nature of the resale function, rather than on the price charged for resold services. The proposed definition is more appropriately applicable in the new competitive market which will evolve in Colorado.

d. Further, HB 1335 speaks in terms of "multiple providers of local exchange service"⁸ and clearly contemplates that all local exchange service providers need not be designated by the Commission as providers of last resort.⁹ The obligation of a local exchange service provider to serve all members of the public indiscriminately, and thus its status as a public utility as defined in Decision No. R84-428, has clearly been affected by the enactment of HB 1335.

e. For the purpose of this rulemaking proceeding, we reject the argument of the Universities that institutions of higher learning should be exempted from the application of these rules. In light of the evolving responsibilities of local exchange service providers under HB 1335,¹⁰ the broad statutory definition of "pub-

⁸ Section 40-15-501(3)(c), C.R.S.

⁹ Section 40-15-502(6), C.R.S.

¹⁰ "Wise public policy relating to the telecommunications industry and the other crucial services it provides is in the interest of Colorado and its citizens[.]" Section 40-15-501(2)(a), C.R.S.

"A provider that offers basic local exchange service through use of its own facilities or on a resale basis may be qualified as a provider of last resort, Resale shall be made available on a nondiscriminatory basis[.]" Section 40-15-502(5)(b), C.R.S.

lic utility" (see § 40-1-103, C.R.S.¹¹), and the inclusive definition of "person" (see § 40-1-102(5), C.R.S.¹²), we find that the record in this proceeding does not support the adoption of the Universities' proposed language.

f. We also find that the Universities' proposed language may create an exemption from the application of these rules that is overly broad. We believe that the issue raised by the Universities is more appropriately considered in an adjudicatory proceeding where the specific facts pertaining to those entities can be addressed.

4. Rule 2. Definitions. Staff and the OCC proposed a rewritten version of the rules as part of their joint supplemental comments. The rewritten draft rules contain a number of new definitions, which these parties argued were necessary for clarity and consistency with the Act. The consensus definitions remained in the rewritten draft rules with some modifications.

a. The consensus definition of "facilities-based telecommunications provider" (2.1) has been modified to delete the last phrase. The last phrase is not definitive of a "facilities-based carrier," but simply describes one activity in which it may engage.

¹¹ As relevant here, this section defines a "public utility" as "every common carrier, ... telephone corporation, telegraph corporation, ... person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest[.]" This definition is subject to exemptions found in § 40-1-103(1)(b).

¹² This section defines "person" as "any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity."

b. A new definition (2.2) of "incumbent facilities-based telecommunications provider" has been added. This definition is consistent with the definition in the Act at § 251(h)(1); however, we have added a provision that imposes incumbent status on facilities-based providers that have been certificated to operate in the state for a period of three years. We have also enumerated the factors to be considered for treatment of comparable carriers as incumbents pursuant to § 251(h)(2) of the Act. We believe that after three years of operation, a new entrant likely will have achieved a significant presence in its markets, and may be presumptively classified as a comparable carrier. However, any incumbent that wishes to contest classification and treatment as an incumbent after three years may apply for continuation of non-incumbent status, with the attendant burden of showing why it should not be treated as an incumbent.

c. The definition of "operational support" (2.3) remains as the proposed in the consensus definition.

d. The proposed consensus definition of "reseller" (2.4) may preclude the possibility of negotiated contracts for the purchase of services for the purpose of resale. Such a provision would likely be inconsistent with the Act, which prescribes a procedure for the voluntary negotiation of contracts for procurement of services for resale. Therefore, we have added language to the proposed rule that specifically contemplates the negotiation of resale contracts, to be approved by the Commission, as well as the instance where the services to be resold would be offered and purchased pursuant to effective tariff.

e. We have added a new definition of "rural telecommunications provider" (2.5). This new definition is consistent with the intent expressed by the General Assembly in § 40-15-503(2)(d), C.R.S., and does not conflict with the definition in the Act at § 152(r)(47).

f. At Rule 2.6, we have adopted a definition for "telecommunications" similar to that in the Act.

g. The definition of "telecommunications exchange service" (2.7) is necessary to provide clarity regarding what services are being regulated. This definition is consistent with the definition of "basic local exchange service" in § 40-15-102(3), C.R.S., as well as with the definitions of "local exchange carrier" and "telecommunications service" in the Act at § 152(r)(44) and (51).

h. The definition of "telecommunications provider" (2.8) makes these rules applicable to any provider of telecommunications exchange services.

i. This added definition of "telecommunications service" (2.9) is taken verbatim from the statutory language at § 152(r)(51) of the Act. It is consistent with and furthers the goal of implementation of HB 1335 and is not inconsistent with any other provision of article 15 of title 40, C.R.S.

5. Rule 3. Regulation of Facilities-Based Telecommunications Providers.

a. Rule 3.1 defines the scope of resale in Colorado. The rule which we will adopt here provides that all facilities-based telecommunications providers must not prohibit nor impose

unreasonable conditions or limitations on resale of their regulated services. As a matter of public policy, we believe that it is important that all providers, not merely incumbent providers, offer services for resale. The decision to apply this Rule to all facilities-based providers yields a result consistent with the intent of HB 1335, and specifically required by § 251 of the Act, which imposes an identical obligation on all local exchange carriers.¹³ The resale requirement imposed by Rule 3.1 is narrower in scope than the federal requirement, in that it applies only to facilities-based providers. However, these Rules do not impose any restrictions on resale by other providers, and such transactions are encouraged.

b. Rule 3.1 applies to all regulated telecommunications services, instead of specifying a particular set of services which must be made available for resale. This requirement is as broad as the mandate in § 251 of the Act.

c. Rules 3.2 and 3.3.1 were proposed as consensus rules and are adopted without change.

d. Rule 3.3.2 reflects an option proposed by certain members of the Working Group, and would require approval of any operational support agreement by this Commission and would allow for public review of the agreement pursuant to Commission order. It is consistent with § 252(e) of the Act, which requires State commissions to approve all interconnection agreements (including any agreement for the provision of resale services).

¹³ Per Rule 2.8, a "telecommunications provider" is equivalent to a "local exchange carrier."

Section 252(h) of the Act requires that such agreements be made available for public inspection and copying after approval by a State commission.

e. Rules 3.4 and 3.5 have been included after they were referred to this docket from Docket No. 95R-555T (Certification). Rule 3.4 provides for a deposit to be paid by a reseller to the facilities-based provider from whom it obtains services for resale. The deposit requirement would be imposed through the terms and conditions specified in an effective tariff. This rule provides protection to the end-use consumer of telecommunications services obtained from a reseller, in the event that the reseller ceases to provide service, by requiring the facilities-based provider to step in and provide service. This rule also provides protection to the facilities-based carrier against financial loss in the same instance. This is equitable since a facilities-based carrier will be in a position, and may be required, to continue to provide service to the reseller's customers.¹⁴ Rule 3.5 requires notice to customers of any alternative arrangements for the provision of services made to address the cessation or curtailment of service by the reseller.

f. Rule 3.6 requires that incumbent facilities-based telecommunications providers charge a wholesale price for services sold for resale. The rule defines the wholesale price as the retail price less certain costs "that will be avoided"

¹⁴ See Docket No. 95R-558T, In the Matter of Proposed Rules Regarding Implementation of §§ 40-15-101 et seq. -- Requirements Relating to Universal Service and the Colorado High Cost Fund, relating to designation by the Commission of providers of last resort and their obligations to serve.

by the facilities-based provider. This definition of the price to be charged by incumbents is consistent with § 252(d)(3) of the Act which defines "wholesale prices" which incumbent local exchange carriers must charge for resale services pursuant to § 251(c)(4)(A).

g. We will adopt the term "avoided" costs in this rule; however, we realize that the use of this term in the Rules creates the potential for extended disagreement regarding the appropriate elements of the wholesale pricing formula. We therefore emphasize that we place on the provider of services at wholesale, the burden of showing that prudent efforts have been made to avoid all unnecessary costs, and that those avoided costs are reflected in proposed wholesale prices.

h. This rule also requires that any package discounts offered by the facilities-based carrier to its end-use customers be made available to those purchasing the same combination of services for resale. This was proposed as a consensus rule, and will be adopted as part of this rule.

i. In the proposed rules submitted to the Commission by the Working Group, there were several options concerning entitlement to high cost fund support as between facilities-based carriers and resellers where eligible services are provided by resellers. However, we are of the opinion that these issues are more appropriately addressed in Docket No. 95R-558T, In the Matter of Proposed Rules Regarding Implementation of §§ 40-15-101 et seq. -- Requirements Relating to Universal Service and the Colorado High

Cost Fund, and will defer them to that docket. We will not adopt these proposed rules in this docket.

6. Rule 4. Service Quality. The rule adopted was proposed as a consensus rule by the Working Group. It is adopted without change.

7. Rule 5. Confidentiality. The rule adopted, without change, was proposed as a consensus rule by the Working Group.

8. Rule 6. Tariff Filings. Rule 6 imposes tariff filing requirements for implementation of resale within specified time frames. The time frame required for rural providers is different from the requirement for other providers.

a. Tariff filing requirement, generally. USWC argues in its Supplemental Reply Comments that tariff filing requirements should be eliminated. We disagree with USWC's conclusion that a tariff requirement would conflict with the negotiation process established by the Act. Subsection 252(a)(1) of the Act is titled "Voluntary negotiations." The process outlined there provides that an incumbent local exchange carrier "may" negotiate and enter into a binding agreement with a requesting telecommunications carrier for interconnection, services, or network elements. If the voluntary negotiation process is unsuccessful, a party to the voluntary negotiations "may" ask a State commission to mediate differences, or "may" seek arbitration by a State commission. No carrier is required to initiate the negotiation, mediation, or arbitration process. Section 251(c)(1) of the Act however, does require that the incumbent local exchange carrier and the requesting telecommu-

nications carrier negotiate in good faith if voluntary negotiations are begun.

b. The Act also requires that every telecommunications carrier "not ... prohibit, and not ... impose unreasonable or discriminatory conditions or limitations on, the resale of ... telecommunications services." § 251(b)(1). Section 253 of the Act mandates that State law or regulation may not prohibit the ability of any entity to provide telecommunications service, although States may impose requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

c. This Commission has the obligation to promote competition in the local exchange telecommunications services market pursuant to HB 1335, including the provision of resale. § 40-15-503(2)(b)(IV), C.R.S. In carrying out its obligations, the Commission is required, under both state and federal laws, to assure that telecommunications services are offered on a competitively neutral basis, in a manner that preserves and advances universal service, protects the public safety and welfare, and safeguards the rights of consumers. Sections 40-15-101 and 503(2)(a), C.R.S., and § 253 of the Act.

d. The Act does not preclude us from requiring that tariffs be filed for particular services, nor do tariff filing requirements conflict with the Act. Indeed, since the negotiation process under § 252 of the Act is voluntary, we believe that we must adopt a mechanism, such as tariff filing requirements, to

foster the emergence of a competitive telecommunications marketplace, including resale, in the absence of initiation of the negotiation process. Such a mechanism is necessary to facilitate the implementation of HB 1335 and to comply with § 253 of the Act in the advancement of universal service, protection of the public safety and welfare, ensuring the continued quality of services, and safeguarding the rights of consumers. A mandatory tariff filing requirement is the appropriate mechanism.

e. Finally, the requirements in this rule to file tariffs are consistent with § 252(f) of the Act, which allows carriers to file a "Statement of Generally Available Terms" with State commissions, and that section's specific parameters for state approval of such "statements." Colorado's existing procedure for the filing and approval of tariffs is the logical procedure for the review of these "statement[s] of the terms and conditions that such company generally offers within that State to comply with the requirements of section 251" Section 253 of the Act.

f. Therefore, we believe that it is appropriate to require that all telecommunications service providers to whom these Rules apply file tariffs to make services available to resellers. A 30-day period in which to accomplish this filing is reasonable. We believe, however, that rural providers should not be required to file such tariffs unless and until they receive a *bona fide* request for the provision of services for resale, and this Commission determines that the request is not unduly economically burdensome and is technically feasible. These prerequisites, or triggers, for requiring rural providers to file tariffs are consistent with this

state's statutorily imposed policy to implement less burdensome regulatory requirements for small rural providers where possible,¹⁵ and with § 251(f)(1) of the Act, which exempts rural providers from the resale requirements of the Act unless the State commission terminates the exemption by applying these parameters.

9. Rule 7. Negotiation, Mediation, and Arbitration.

a. Rule 7.1. Effect of approved contracts. Section 252(i) of the Act requires:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

This section clearly imposes a duty to offer resale services to any reseller on the same terms and conditions, once those terms and conditions have been established for a single reseller. On a case-by-cases basis, as the Commission reviews each contract, the Commission will consider whether or not the contract contains terms with respect to rates, terms, and conditions associated with the

¹⁵ Section 40-15-203.5, C.R.S. requires that the Commission "grant regulatory treatment which is less comprehensive than otherwise provided for under this article to small local exchange providers that serve fewer than fifty thousand access lines in the state." It also requires that the Commission "consider the cost of regulation in relation to the benefit derived from such regulation."

In addition, § 40-15-501(2)(d), C.R.S., recognizes the rural nature of this state, and § 40-15-503(2)(f), C.R.S., mandates that the Commission

"adopt rules providing for simplified regulatory treatment for basic local exchange providers that serve only rural exchanges of ten thousand or fewer access lines. ... [which] may include optional methods of regulatory treatment that reduce regulatory requirements, reduce the financial burden of regulation, and allow pricing flexibility. Such simplified treatment may also allow extensions of time for the implementation of requirements under this part 5 in rural exchanges for which there are no competing basic local exchange providers certified."

resale of telecommunications services that are of broad applicability and that should be contained in tariffs. If the Commission determines that one or more contract provisions have such broad applicability, it will order the facilities-based carrier to file appropriate tariffs containing the identified elements of rates, terms, and conditions of general applicability.

b. Rule 7.2. The requirement in Rule 7.2 that all resale contracts be submitted for Commission approval is consistent with Rule 3.3.2, but covers all aspects of contracts for resale.

10. Rule 8. Regulation of Resellers.

a. Rule 8.1. The rule adopted is the consensus rule proposed by the Working Group.

b. Rule 8.2. USWC originally proposed a provision which would prohibit new entrants from bundling interLATA toll with local exchange service until USWC could also offer interLATA toll bundled with local exchange service. USWC's proposal was similar to the rule we adopt as Rule 8.2, but the proposal did not achieve consensus. However, with the effectiveness of the Act, the necessity for such a rule became apparent in order to avoid conflict with § 271(e)(1) of the Act.

c. Rule 8.2 as adopted is the rule proposed by MCI in its final comments, and mirrors the language of the Act.

d. Rule 8.3 is similar in effect to Option One in the proposed rules. The language in Rule 8.3 is taken directly from § 251(c)(4)(B) of the Act. This rule is designed to limit arbitrage in the provision of resold services.

e. Rule 8.4 requires disclosure to consumers of the price being paid for basic local exchange services. This rule fulfills two functions: first, consumers will be aware of the price they are paying for basic local exchange service; second, for purposes of monitoring compliance with § 40-15-502(3), C.R.S., consumers and the staff of this Commission will more easily be able to ascertain how basic local exchange service is being priced by resellers.

11. Rule 9. Dispute Resolution. The language adopted has similar effect to the language in the proposed consensus rule. However, Rule 9 as adopted makes clear that all disputes arising out of the resale of services pursuant to these Rules will be resolved by the Commission, including the failure to provide service, or an inability to arrive at agreement on rates, terms, and conditions. The Act clearly mandates that this Commission take such a role. See § 252 of the Act.

12. Rule 10. Variance and Waiver is the proposed consensus rule.

C. Adoption of Rules.

In general, we believe that resale of telecommunications services by all telecommunications service providers is necessary for achievement of the goals announced in HB 1335. The rules adopted here are essential for the implementation of HB 1335, and will advance the goal of implementing competition in the local exchange service market in Colorado, while avoiding conflict with

the intent and terms of the Act. The rules attached as Attachment A are appropriate for adoption.

II. ORDER

A. The Commission Orders That:

1. The rules set forth in Attachment A are adopted.
2. This Order adopting the attached rules shall become final 20 days following the Mailed Date of this Decision in the absence of filing of any applications for rehearing, reargument, or reconsideration. In the event any application for rehearing, reargument, or reconsideration to this Decision is timely filed, this Order of Adoption shall become final upon a Commission ruling denying any such application, in the absence of further order of the Commission.
3. Within 20 days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Attorney General regarding the legality of the rules.
4. The finally adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion by the Attorney General.
5. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Order.